

1 DANIEL M. PETROCELLI (S.B. # 97802)
2 detrocelli@omm.com
3 O'MELVENY & MYERS LLP
4 1999 Avenue of the Stars, 8th Floor
5 Los Angeles, California 90067-6035
6 Telephone: (310) 553-6700
7 Facsimile: (310) 246-6799

8 CATALINA VERGARA (S.B. # 223775)
9 evergara@omm.com
10 O'MELVENY & MYERS LLP
11 400 South Hope Street, 18th Floor
12 Los Angeles, California 90071
13 Telephone: (213) 430-6000
14 Facsimile: (213) 430-6400

15 *Attorneys for Defendants*
16 The Azoff Company Holdings LLC and
17 The Azoff Company LLC

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 KELLYE CROFT,
21 Plaintiff,
22 vs.
23 JAMES DOLAN, HARVEY
24 WEINSTEIN, JD & THE
25 STRAIGHT SHOT, LLC, THE
26 AZOFF COMPANY HOLDINGS
27 LLC f/k/a AZOFF MUSIC
28 MANAGEMENT, LLC, THE
AZOFF COMPANY LLC f/k/a
AZOFF MSG ENTERTAINMENT,
LLC, DOE CORPORATION 1-10,
Defendant.

Case No. 2:24-cv-00371

DEFENDANTS AZOFF ENTITIES'
NOTICE OF MOTION AND MOTION
TO DISMISS AMENDED COMPLAINT
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 12(b)(6)

Date: June 3, 2024
Time: 1:30pm
Location: Courtroom 9A
Judge: Hon. Percy Anderson

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 3, 2024, at 1:30 p.m., or as soon
3 thereafter as counsel may be heard by the above-entitled court, located in Courtroom
4 9A at First Street Courthouse, 350 West 1st Street, Los Angeles, California 90012,
5 Defendants The Azoff Company Holdings LLC and The Azoff Company LLC
6 (collectively, the “Azoff Entities”) will and hereby do move, pursuant to Rule
7 12(b)(6) of the Federal Rules of Civil Procedure, for dismissal of Plaintiff’s first
8 cause of action against the Azoff Entities.

9 This motion is based on the ground that Plaintiff’s first—and only—claim for
10 relief against the Azoff Entities, for allegedly participating in a sex trafficking
11 venture in violation of the federal Trafficking Victims Protection Act, 18 U.S.C.
12 § 1591, fails to state a viable claim. Even after amending her Complaint, Plaintiff
13 has failed to allege any facts that, taken as true, would satisfy the required elements
14 of the claim—namely, that the Azoff Entities knew of, participated in, or benefitted
15 from any sex trafficking venture.

16 The Azoff Entities’ motion is based on this Notice of Motion and
17 accompanying Memorandum of Points and Authorities; the concurrently filed
18 Proposed Order; all other briefing in this case; and such additional submissions and
19 argument, including any reply briefing, as may be presented at or before the hearing
20 on this motion. The motion is made following the conference of counsel required
21 by Local Rule 7-3, which took place via videoconference on March 18, 2024 and
22 April 23, 2024.

23
24 DATED: April 24, 2024

O’MELVENY & MYERS LLP

25 By: /s/ Daniel M. Petrocelli
26

27 Daniel M. Petrocelli
28 Attorneys for Defendants Azoff Entities

1 DANIEL M. PETROCELLI (S.B. # 97802)
2 detrocelli@omm.com
3 O'MELVENY & MYERS LLP
4 1999 Avenue of the Stars, 8th Floor
5 Los Angeles, California 90067-6035
6 Telephone: (310) 553-6700
7 Facsimile: (310) 246-6799

8 CATALINA VERGARA (S.B. # 223775)
9 evergara@omm.com
10 O'MELVENY & MYERS LLP
11 400 South Hope Street, 18th Floor
12 Los Angeles, California 90071
13 Telephone: (213) 430-6000
14 Facsimile: (213) 430-6400

15 *Attorneys for Defendants*
16 The Azoff Company Holding LLC and
17 Azoff Music Management, LLC

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 KELLYE CROFT.

21 Plaintiff,

22 vs.

23 JAMES DOLAN, HARVEY
24 WEINSTEIN, JD & THE
25 STRAIGHT SHOT, LLC, THE
26 AZOFF COMPANY HOLDINGS
27 LLC f/k/a AZOFF MUSIC
28 MANAGEMENT, LLC, THE
AZOFF COMPANY LLC f/k/a
AZOFF MSG ENTERTAINMENT,
LLC, DOE CORPORATION 1-10,

Defendant.

Case No. 2:24-cv-00371

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS AZOFF ENTITIES'
MOTION TO DISMISS AMENDED
COMPLAINT PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6)**

Date: June 3, 2024

Time: 1:30pm

Location: Courtroom 9A

Judge: Hon. Percy Anderson

TABLE OF CONTENTS

	Page
1 I. INTRODUCTION.....	1
2 II. BACKGROUND.....	2
3 III. LEGAL STANDARD	4
4 IV. ARGUMENT	5
5 A. Plaintiff fails to allege facts showing that the Azoff Entities knew 6 or should have known of any sex trafficking scheme.....	6
7 B. Plaintiff fails to allege facts showing that the Azoff Entities 8 participated in any sex trafficking venture.....	9
9 C. Plaintiff fails to allege facts showing that the Azoff Entities 10 knowingly benefitted from any sex trafficking venture.	11
11 D. Plaintiff fails to allege facts showing that the Azoff Entities are 12 vicariously liable for Dolan's conduct.....	13
13 E. The Court should not grant leave to amend.....	15
14 V. CONCLUSION	16

TABLE OF AUTHORITIES

	Page(s)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
Cases	
3	<i>Abagninin v. AMVAC Chem. Corp.</i> , 545 F.3d 733 (9th Cir. 2008) 16
5	<i>Ascon Props., Inc. v. Mobil Oil Co.</i> , 866 F.2d 1149 (9th Cir. 1989) 16
7	<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009) 5, 6
9	<i>B.J. v. G6 Hospitality, LLC</i> , 2023 WL 6120682 (N.D. Cal. Sept. 18, 2023) 14
11	<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007) 5
13	<i>Canosa v. Ziff</i> , 2019 WL 498865 10, 11
15	<i>Doe I v. Deutsche Bank Aktiengesellschaft</i> , 671 F. Supp. 3d 387 (S.D.N.Y. 2023) <i>passim</i>
17	<i>Doe by Doe v. Piraino</i> , -- F. Supp. 3d --, 2023 WL 5310556 (M.D. Tenn. Aug. 17, 2023) 7, 8, 15
19	<i>Does 1-6 v. Reddit, Inc.</i> , 51 F.4th 1137 (9th Cir. 2022) 11, 12
21	<i>Eckhart v. Fox News Network, LLC</i> , 2021 WL 4124616 (S.D.N.Y. Sept. 9, 2021) 7, 8
23	<i>Geiss v. Weinstein Co. Holdings LLC</i> , 383 F. Supp. 3d 156 (S.D.N.Y. 2019) 9, 11, 13
25	<i>Ileto v. Glock, Inc.</i> , 349 F.3d 1191 (9th Cir. 2003) 4
27	<i>In re ChinaCast Educ. Corp. Sec. Litig.</i> , 809 F.3d 471 (9th Cir. 2015) 15
29	<i>J.B. v. G6 Hosp., LLC</i> , 2020 WL 4901196 (N.D. Cal. Aug. 20, 2020) 8

TABLE OF AUTHORITIES

	Page(s)
1 <i>J.C. v. Choice Hotels Int'l, Inc.</i> , 2 2020 WL 6318707 (N.D. Cal. Oct. 28, 2020)	14
3 <i>Moss v. U.S. Secret Serv.</i> , 4 572 F.3d 962 (9th Cir. 2009)	5, 6
5 <i>Noble v. Weinstein</i> , 6 335 F. Supp. 3d 504 (S.D.N.Y. 2018)	9, 11
7 <i>Ratha v. Phatthana Seafood Co.</i> , 8 35 F.4th 1159 (9th Cir. 2022), <i>cert. denied</i> , 143 S. Ct. 491, 214 L. 9 Ed. 2d 280 (2022)	5, 6
10 <i>Salameh v. Tarsadia Hotel</i> , 11 726 F.3d 1124 (9th Cir. 2013)	16
12 <i>Sprewell v. Golden State Warriors</i> , 13 266 F.3d 979 (9th Cir. 2001)	5, 14, 15
Statutes	
14 18 U.S.C. § 1591	1, 5
15 18 U.S.C. § 1591(a)	5
16 18 U.S.C. § 1591(b)	5
17 18 U.S.C. § 1595	5
18 18 U.S.C. § 1595(a)	1, 11
Other Authorities	
19 H.R. REP. NO. 106-487, pt. 1, at 15 (1999)	2
20 Restatement (Third) of Agency	14, 15
Rules	
21 Fed. R. Civ. P. 11(b)	6

1 **I. INTRODUCTION**

2 Plaintiff's Amended Complaint does not and cannot cure the fatal infirmities
3 in her claim against the Azoff Entities. She again accuses the Azoff Entities of
4 violating the federal Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. §
5 1591, by allegedly participating in a venture to traffick her to Los Angeles "for the
6 purposes of providing sexual favors." But not only does the Amended Complaint
7 fail to plausibly allege any such venture, its claim that the Azoff Entities participated
8 in it is indefensible. Devoid of any actual allegations of wrongdoing, the Amended
9 Complaint adds allegations that do nothing to establish the elements of a federal sex
10 trafficking claim against the Azoff Entities. The core factual allegations remain
11 unchanged: Plaintiff alleges that (i) the Azoff Entities coordinated Plaintiff's travel
12 to and from Los Angeles to perform masseuse services for the Eagles band and co-
13 defendant James Dolan in connection with their concert appearances in January
14 2014; (ii) a person she now describes as an "agent" of the Azoff Entities, Marc
15 Robbins, arranged a doctor's visit for Plaintiff while she was in Los Angeles and
16 gave her rides to the concert venue on the days she worked; and (iii) Dolan
17 encouraged Plaintiff to go shopping and out to dinner with two "female assistants
18 from [the Azoff Entities]." Plaintiff also alleges, for the first time and without any
19 factual support, that Dolan was an agent of the Azoff Entities and that they are thus
20 vicariously liable for his alleged trafficking of Plaintiff.

21 These benign facts do not come close to supporting a sex trafficking claim.
22 Critically, as before, the Amended Complaint contains no facts suggesting the Azoff
23 Entities *participated in, benefitted from, or even knew* about any sex trafficking
24 scheme—all of which are required to state a claim. *See* 18 U.S.C. § 1595(a). That
25 is because Plaintiff has no facts that could plausibly implicate the Azoff Entities in
26
27
28

1 conduct as deplorable as sex trafficking.¹ Plaintiff's federal sex trafficking claim
 2 against the Azoff Entities should accordingly be dismissed.

3 Moreover, Plaintiff should not be granted leave to amend. This is Plaintiff's
 4 third bite at the apple. Before suit was commenced, after receiving and reviewing a
 5 draft of the Original Complaint, counsel for the Azoff Entities detailed to Plaintiff's
 6 counsel the fatal deficiencies in the sex trafficking claim against the Azoff Entities.
 7 Plaintiff proceeded to file suit anyway, purporting to address these deficiencies by
 8 concocting an allegation on "information and belief" that the Azoff Entities knew
 9 about Dolan's alleged sexual exploitation of Plaintiff and benefitted as a result of
 10 the alleged scheme. No facts were alleged, or could be, to justify this bare
 11 conclusory allegation added without any basis—a matter that is addressed in the
 12 Azoff Entities' pending motion for Rule 11 sanctions. Dkt. 43.

13 Furthermore, after Plaintiff filed suit, in a Rule 11 motion served 21 days in
 14 advance of filing (as required by rule), Plaintiff's counsel was again apprised of the
 15 irremediable infirmities of her claim against the Azoff Entities. Yet Plaintiff and her
 16 counsel still refused to withdraw the claim. Indeed, after Azoff Entities filed their
 17 motion to dismiss the Original Complaint, Plaintiff doubled down on her baseless
 18 claim by filing an Amended Complaint. Leave to further amend would thus be
 19 futile. Plaintiff's federal sex trafficking claim against the Azoff Entities should now
 20 be dismissed with prejudice.

21 **II. BACKGROUND**

22 The factual allegations against the Azoff Entities are sparse and not plausibly
 23 or remotely probative of participation in sex trafficking. Am. Compl. ¶¶ 47–59.

24

25 ¹ When the TVPA was enacted, it was "to combat the growing problem of
 26 trafficking in persons" by "organized criminal groups, [that] lure women with false
 27 promises of earning money overseas as maids, factory workers, sales clerks,
 28 dancers, or models" but are instead held "under slavery-like conditions in
 prostitution or in forced labor." H.R. REP. NO. 106-487, pt. 1, at 15 (1999).

1 Plaintiff alleges that, around the end of 2013, the Azoff Entities asked her to come
 2 to California to work as a massage therapist for the 2014 Los Angeles leg of the
 3 Eagles tour. *Id.* ¶ 47. She claims the Azoff Entities arranged her flight to Los
 4 Angeles—which an email forwarded to her by Marc Robbins, purportedly an agent
 5 of the Azoff Entities, suggested would be paid by Dolan.² *Id.* ¶ 48. She also claims
 6 that the Azoff Entities, including Robbins, arranged for her transportation from the
 7 airport in Los Angeles, for her stay at The Peninsula Hotel in Beverly Hills, and for
 8 her transportation to the Forum (the concert venue where she performed her
 9 massage services). *Id.* ¶¶ 49–51, 56–57. According to Plaintiff, these arrangements
 10 were orchestrated by the Azoff Entities and Dolan—who allegedly helped finance
 11 the Eagles tour,³ made monetary investments in the Azoff Entities, and opened for
 12 the Eagles with his band—because Dolan “wished to sexually exploit” Plaintiff on
 13 the tour. *Id.* ¶¶ 49–59. She concludes “[o]n information and belief,” and with no
 14 supporting facts, that the Azoff Entities “arranged for [Plaintiff] to be brought to
 15 California at Dolan’s request” for the “purposes of engaging in unwanted sexual acts
 16 with Dolan.” *Id.* ¶ 59.

17 Plaintiff further claims that Dolan “fraudulently coordinate[d]” a meeting
 18 between her and Harvey Weinstein, purportedly a close friend of Dolan’s. *Id.* § IV.;
 19 *id.* ¶ 71. She alleges that, one evening, after she allegedly accompanied two “female
 20 assistants” from one of the Azoff Entities for shopping and dinner at Dolan’s
 21

22 ² Plaintiff previously—and falsely—described Robbins as an “executive” of the
 23 Azoff Entities. As Plaintiff’s counsel was informed and as is addressed in the Rule
 24 11 motion, Robbins was not an executive—but an independent contractor—of the
 25 Azoff Entities who was acting as the manager for the Eagles’ touring company. In
 26 any case, now characterizing Robbins as an agent—in a purely conclusory allegation
 27 no less—does nothing to salvage Plaintiff’s claim.

28 ³ Plaintiff’s counsel also was advised that Dolan did not finance the Eagles tour—a
 29 false assertion the Court need not consider in ruling on this motion.

1 encouragement, she was waiting for the elevator to return to her hotel room when
 2 Weinstein introduced himself to her. *Id.* ¶¶ 68–71. As she describes it, after
 3 Weinstein learned she was a massage therapist, he suggested he might have work
 4 opportunities for her and invited her to join him in his suite, which she agreed to do.
 5 *Id.* ¶¶ 73–76. Plaintiff claims Weinstein sexually assaulted her in the suite. *Id.*
 6 ¶¶ 77–96. The next day, she claims she felt “so physically and emotionally unwell”
 7 that she was unable to work, at which point Robbins purportedly sent a doctor to see
 8 her. *Id.* ¶ 100. Shortly thereafter, the Los Angeles leg of the Eagles tour ended, and
 9 the Azoff Entities arranged for Plaintiff’s return flight back to her home in
 10 Tennessee. *Id.* ¶ 102.

11 The Amended Complaint alleges *no facts* linking Weinstein’s alleged assault
 12 to the Azoff Entities, and none exists. Instead, Plaintiff resorts to empty, conclusory
 13 allegations that Dolan and the Azoff Entities formed a “venture” to traffick her to
 14 California “for purposes of sex induced by force, fraud, or coercion” and “providing
 15 sexual favors.” *Id.* ¶¶ 111–114. She further alleges the Azoff Entities benefitted
 16 “financially and otherwise” from the alleged scheme because “Dolan was a critically
 17 important business partner” for them and trafficking Plaintiff “kept their important
 18 partner, a notoriously erratic billionaire, happy.” *Id.* ¶ 115. And in her Amended
 19 Complaint, Plaintiff now claims without any factual basis that Dolan was acting in
 20 his capacity as an agent of the Azoff entities when he allegedly “engaged in
 21 unwanted commercial sex acts with Plaintiff in Los Angeles.” *Id.* ¶ 113. These
 22 allegations are insufficient as a matter of law to state a sex trafficking claim against
 23 the Azoff Entities.

24 **III. LEGAL STANDARD**

25 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
 26 legal sufficiency of the plaintiff’s claims. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199–
 27 1200 (9th Cir. 2003). Under Rule 12(b)(6), “a complaint must contain sufficient

1 factual matter, accepted as true, to state a claim for relief that is plausible on its
 2 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). A
 3 complaint cannot survive a motion to dismiss if it merely “tenders naked assertion[s]
 4 devoid of further factual enhancement.” *Id.* “[A] formulaic recitation of the
 5 elements of a cause of action” is insufficient. *Bell Atlantic Corp. v. Twombly*, 550
 6 U.S. 544, 555 (2007). The court need not accept “allegations that are merely
 7 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell*
 8 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Thus, “a court
 9 considering a motion to dismiss can choose to begin by identifying pleadings that,
 10 because they are no more than conclusions, are not entitled to the assumption of
 11 truth.” *Iqbal*, 556 U.S. at 679. “[F]or a complaint to survive a motion to dismiss,
 12 the non-conclusory ‘factual content,’ and reasonable inferences from that content,
 13 must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S.*
 14 *Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678).

15 **IV. ARGUMENT**

16 Plaintiff brings her claim under 18 U.S.C. § 1591, which imposes criminal
 17 penalties on individuals who engage directly in trafficking, as well as those who
 18 knowingly participate in and benefit from trafficking schemes. 18 U.S.C.
 19 §§ 1591(a), (b). But it is 18 U.S.C. § 1595 that provides a private right of action for
 20 violations of Section 1591, permitting victims of trafficking to sue both direct
 21 perpetrators of trafficking and anyone who “knowingly benefits, or attempts or
 22 conspires to benefit, financially or by receiving anything of value from participation
 23 in a venture which that person knew or should have known has engaged in an act in
 24 violation of [the TVPA].” 18 U.S.C. § 1595; *see also Ratha v. Phatthana Seafood*
 25 *Co.*, 35 F.4th 1159, 1175 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 491, 214 L. Ed. 2d
 26 280 (2022). To state a viable claim under Section 1595, Plaintiff must allege facts
 27 plausibly showing that the Azoff Entities knowingly benefitted from participation in

1 a venture with Dolan that they knew or should have known involved sex trafficking.
2 See *Ratha*, 35 F.4th at 1175. Plaintiff's scant allegations against the Azoff Entities,
3 even if taken as true, cannot establish these elements.

A. Plaintiff fails to allege facts showing that the Azoff Entities knew or should have known of any sex trafficking scheme.

6 The Amended Complaint has no factual basis for the allegation that the Azoff
7 Entities knew or should have known that Plaintiff would allegedly be forced to
8 engage in a commercial sex act in violation of the TVPA while working as a
9 masseuse on the Eagles tour in Los Angeles. Plaintiff attempts to hide this fatal
10 flaw by inventing a conclusory allegation “on information and belief” that the Azoff
11 Entities “knew or acted in reckless disregard to the fact that” Plaintiff was flown out
12 to Los Angeles because Dolan intended to sexually exploit her. Am. Compl. ¶ 59.
13 But this is the exact sort of “naked assertion devoid of further factual enhancement”
14 that is insufficient to state a claim. *Iqbal*, 556 U.S. at 678. There is zero “non-
15 conclusory factual content” to support the allegation, *Moss*, 572 F.3d at 969
16 (quotations omitted), and no diligence or investigation underpinning it, *see* Fed. R.
17 Civ. P. 11(b). It thus deserves no weight. *Moss*, 572 F.3d at 969.

18 Conspicuously absent from Plaintiff’s Amended Complaint are any factual
19 allegations indicating that the Azoff Entities ignored the sort of “red flags” that
20 courts have considered in concluding that a defendant knew or should have known
21 sex trafficking was taking place. For example, in *Doe 1 v. Deutsche Bank
Aktiengesellschaft*, 671 F. Supp. 3d 387 (S.D.N.Y. 2023), the Southern District of
22 New York held that the plaintiff adequately pleaded a TVPA claim against
23 JPMorgan and Deutsche Bank for participation in Jeffrey Epstein’s sex trafficking
24 venture by alleging that the banks were “aware of Epstein’s convictions for sex
25 crimes and ignored numerous red flags” that his large cash withdrawals were being
26 used to pay off victims, including internal departments that “alerted management
27

1 about Epstein’s sex trafficking” and high-level executives who personally “observed
2 victims in Epstein’s home.” *Id.* at 407–08. Here, in stark contrast, there are no
3 allegations that anyone affiliated with the Azoff Entities observed any sex
4 trafficking or other sexual exploitation by Dolan, were aware of or had internally
5 discussed any prior sexual misconduct by Dolan, or ignored any red flags.

Indeed, Plaintiff’s allegations are even more threadbare than those in cases that courts have dismissed for failure to state a TVPA claim. For example, in *Eckhart v. Fox News Network, LLC*, 2021 WL 4124616 (S.D.N.Y. Sept. 9, 2021), the plaintiff alleged that Fox News benefitted from a sex trafficking venture perpetrated by one of its anchors, who allegedly coerced female employees to perform sex acts in exchange for career advancement. *Id.* at *11. Although the plaintiff also alleged that Fox News was “well aware” that the anchor had had an affair, completed a sex addiction treatment program, “flirted with younger women in the office,” and was a “serial harasser,” the court found those allegations insufficient to satisfy the “knowledge” element of Section 1595 and dismissed the claim. *Id.* (quotations omitted). The court reasoned that, while these allegations “could have put Fox News on notice that [the anchor] was engaged in sexual harassment,” they were “insufficient to establish that Fox News knew or should have known that [the anchor] was specifically engaged in sex trafficking.” *Id.* (emphasis added).

20 Similarly, in *Doe by Doe v. Piraino*, -- F. Supp. 3d --, 2023 WL 5310556
21 (M.D. Tenn. Aug. 17, 2023), a case involving a fencing coach who allegedly
22 sexually abused a minor student, the court dismissed a TVPA claim against USA
23 Fencing, the national governing body that employed the coach. *Id.* at *8. There, the
24 court held that the plaintiffs' allegations that the coach "had allegedly groped an
25 adult woman" on one occasion, engaged in "belligerent and unethical behavior at
26 fencing tournaments," and had been arrested for public intoxication "may have put
27 [USA Fencing] on notice that [the coach] was generally a bad guy and a poor

1 ambassador for the sport, but not that he was engaged in acts that constituted [] sex
 2 trafficking.” *Id.* (quotations omitted). The plaintiffs thus failed to state a TVPA
 3 claim because they “[did] not point to any such specific and obvious signs that, if
 4 USA Fencing had been paying attention, would have alerted it to” the alleged sex
 5 trafficking. *Id.*; *see also J.B. v. G6 Hosp., LLC*, 2020 WL 4901196, *10 (N.D. Cal.
 6 Aug. 20, 2020) (“Significantly, while Plaintiff’s allegations suggest that Economy
 7 Inn quite possibly should have been aware of some nefarious conduct, they do not
 8 suggest that Economy Inn should have known that the venture constituted sex
 9 trafficking.”).

10 As in *Piraino* and *Eckhart*, Plaintiff has failed to allege any “specific and
 11 obvious signs” that would have provided the Azoff Entities with actual or
 12 constructive knowledge that Dolan “was *specifically* engaged in sex trafficking.”
 13 *See Piraino*, 2023 WL 5310556, at *8; *Eckhart*, 2021 WL 4124616, at *11. While
 14 Plaintiff alleges that Dolan forced her into unwanted sexual activities during a prior
 15 leg of the tour before she came to Los Angeles, she nowhere alleges she told any
 16 Azoff Entity representatives about such activities or that the Azoff Entities
 17 otherwise learned about them. *See Am. Compl. ¶¶ 37–46.* Moreover, Plaintiff does
 18 not allege that the Azoff Entities had knowledge of *any* sort of misconduct by
 19 Dolan—not even the harassing or abusive behaviors of the kind found insufficient to
 20 establish knowledge of sex trafficking in *Piraino* and *Eckhart*. Nor is there any
 21 allegation in the Amended Complaint that the Azoff Entities had any connection to
 22 the alleged sexual assault by Weinstein in Los Angeles that Plaintiff features as the
 23 centerpiece of her lawsuit.⁴ *See Am. Compl. ¶¶ 47–102.* Indeed, the Azoff Entities
 24
 25

26 ⁴ Grasping at straws, Plaintiff tries to link Weinstein to the Azoff Entities by
 27 offering a single photo of Dolan, Weinstein, and Irving Azoff at an advertising trade
 28 conference in 2015. *Am. Compl. ¶ 9.*

1 could not possibly have foreseen the apparent chance encounter between Weinstein
 2 and Plaintiff that is described in the Amended Complaint. *See id.* ¶¶ 68–72.⁵

3 In short, Plaintiff has not alleged facts that could plausibly show that the
 4 Azoff Entities knew or should have known she was brought to Los Angeles to
 5 engage in a commercial sex act in violation of the TVPA. On that ground alone,
 6 Plaintiff's claim against the Azoff Entities fails.

7 **B. Plaintiff fails to allege facts showing that the Azoff Entities
 8 participated in any sex trafficking venture.**

9 Plaintiff relies on guilt by association to plead participation by the Azoff
 10 Entities in sex trafficking. She alleges that “Dolan was in multiple business
 11 ventures” with the Azoff Entities, including Azoff MSG Entertainment LLC (which
 12 engaged in various music-related business ventures), and was a “critically important
 13 business partner” in view of Dolan’s alleged investment in the tour (false, *see*
 14 footnote 3 *supra*) and other joint business dealings, such as the reopening of the
 15 Forum in January 2014. Am. Compl. ¶¶ 32, 53, 115. And she alleges that “Dolan
 16 was extremely close friends with Irving Azoff,” manager for the Eagles, and that the
 17 two spoke on a daily basis. *Id.* ¶ 35. But even accepting these allegations, mere
 18 association is insufficient to establish the Azoff Entities’ participation in any sex
 19 trafficking venture. What is required are facts showing knowing or reckless
 20 “participation in the sex trafficking act itself.” *Noble v. Weinstein*, 335 F. Supp. 3d
 21 504, 524 (S.D.N.Y. 2018); *see also Geiss v. Weinstein Co. Holdings LLC*, 383 F.
 22 Supp. 3d 156, 169 (S.D.N.Y. 2019) (participation not established by “participation

23
 24
 25
 26 ⁵ Plaintiff suggests that Dolan “fraudulently coordinate[d]” this meeting between her
 27 and Weinstein, Am. Compl. § I.V, although the only facts alleged to support this
 28 suggestion are that Dolan and Weinstein were friends and that Dolan had mentioned
 to Weinstein that he had a great massage therapist, *id.* ¶¶ 70–72.

1 in other activities engaged in by the sex traffickers that do not further the sex-
 2 trafficking aspect of their venture.”).

3 Beyond these business ties, the few facts Plaintiff alleges regarding the actual
 4 *conduct* of the Azoff Entities—that the Azoff Entities, including Marc Robbins,
 5 arranged Plaintiff’s travel to and from Los Angeles, and to and from the Forum and
 6 Ms. Croft’s hotel while she was in Los Angeles, that Robbins obtained a doctor for
 7 her, and that two assistants for the Azoff Entities shopped and dined with her on one
 8 occasion upon Dolan’s encouragement—are inconsequential and insufficient to
 9 demonstrate participation in a sex trafficking venture.⁶ Courts have required far
 10 more to satisfy the “participation” element. For example, in *Deutsche Bank*, the
 11 court held that the plaintiff adequately pleaded JPMorgan and Deutsche Bank’s
 12 participation in Jeffrey Epstein’s sex trafficking venture where they allegedly sent
 13 “dozens of wires” “of \$10,000 or more to then known co-conspirators,” “structured”
 14 withdrawals of cash to pay off victims so as to “avoid alerting authorities,” and
 15 deliberately “delayed filing suspicious activity reports” regarding those withdrawals.
 16 671 F. Supp. 3d at 405–06 (quotations omitted). Similarly, in *Canosa v. Ziff*, the
 17 plaintiff sufficiently pleaded participation by employees of Harvey Weinstein in his
 18 sex trafficking by alleging “specific means and methods” that facilitated Weinstein’s
 19 sexual assaults, such as “[giving] Weinstein medications and other paraphernalia
 20 (such as caverject shots) that he needed to perform sexual acts, and clean[ing] up
 21 after the sexual assaults to avoid detection by others.” 2019 WL 498865, at *3, *24.
 22 In contrast, in *Noble*, which also concerned Harvey Weinstein’s sex trafficking, the
 23 court held that the plaintiff failed to state a claim against his brother Robert
 24

25 ⁶ Plaintiffs’ Amended Complaint includes additional inconsequential allegations—
 26 for example, that Robbins told Plaintiff that she would be needed at the show on
 27 Monday and that “[w]e will make arrangements for you,” Am. Compl. ¶ 50, and that
 28 Robbins personally drove her to the Forum on one occasion, *id.* ¶ 51. These facts
 show nothing more than Robbins’ involvement in various tour logistics.

1 Weinstein where the actions he was alleged to have taken, such as paying for travel,
2 were things he did simply “by virtue of his job responsibilities.” 335 F. Supp. 3d at
3 524.

4 Unlike *Deutsche Bank* and *Canosa*, Plaintiff has alleged nothing here to
5 suggest that the Azoff Entities took actions in furtherance of the alleged sex
6 trafficking scheme, such as providing paraphernalia needed for sexual acts or
7 intentionally taking steps to prevent discovery of the trafficking. *See Deutsche*
8 *Bank*, 671 F. Supp. 3d at 405–06; *Canosa*, 2019 WL 498865, at *3. Nor has she
9 even alleged that the Azoff Entities were made aware of Weinstein’s alleged sexual
10 assault. She alleges she was “unwell” and that Robbins “sent a doctor to see her,”
11 Am. Compl. ¶ 100, but nowhere alleges that she informed Robbins or anyone else
12 affiliated with the Azoff Entities that she had allegedly been assaulted. Even
13 assuming Robbins’ alleged activities can be imputed to the Azoff Entities, arranging
14 Plaintiff’s travel to join the tour in Los Angeles, her lodging, and a doctor’s visit—
15 all typical tasks in managing a tour—are plainly insufficient to satisfy the requisite
16 participation element of Plaintiff’s federal sex trafficking claim. On this additional
17 ground, the claim must be dismissed.

C. Plaintiff fails to allege facts showing that the Azoff Entities knowingly benefitted from any sex trafficking venture.

20 Finally, Plaintiff fails to plead facts showing that the Azoff Entities
21 knowingly benefitted “financially or by receiving anything of value” from
22 participation in any sex trafficking venture. 18 U.S.C. § 1595(a). “[K]nowingly
23 benefitting” from participation in a sex trafficking venture “requires actual
24 knowledge and ‘a causal relationship between affirmative conduct furthering the
25 sex-trafficking venture and receipt of a benefit.’” *Does 1-6 v. Reddit, Inc.*, 51 F.4th
26 1137, 1145 (9th Cir. 2022) (quoting *Geiss*, 383 F. Supp. 3d at 169), *cert. denied*,
27 143 S. Ct. 2560, 216 L. Ed. 2d 1180 (2023).

1 Here, Plaintiff alleges that the Azoff Entities benefitted from “keeping Dolan
 2 satisfied” because he was “a critically important business partner for the Azoff
 3 Entities,” as reflected by his decision to “invest \$175 million in Azoff MSG
 4 Entertainment, LLC and to serve as a funding source for the Eagles 2014 tour and
 5 the opening of The Forum.” Am. Compl. ¶ 115. But these allegations do not
 6 establish that Dolan took these actions *because of* the Azoff Entities’ participation in
 7 the alleged sex trafficking venture. *See Reddit*, 51 F.4th at 1145. For one, these
 8 alleged acts by Dolan necessarily would have occurred before the alleged
 9 trafficking, precluding any causal relationship. *See Am. Compl.* ¶¶ 31–32
 10 (describing Plaintiff’s involvement and Dolan’s funding of the “November 2013 leg
 11 of the tour”). And the news article Plaintiff cites regarding Dolan’s investment in
 12 Azoff MSG Entertainment LLC is from September 2013—months before the
 13 alleged trafficking in January 2014. *See id.* ¶ 35 n.4; *id.* ¶ 53 (alleging that Azoff
 14 MSG Entertainment was created in September 2013 to fund the reopening of the
 15 Forum). Moreover, even accepting that Dolan was an important business partner of
 16 the Azoff Entities does not show that Dolan continued doing business with the
 17 Azoff Entities *because* they engaged in “affirmative conduct furthering the sex-
 18 trafficking venture.” *See Reddit*, 51 F.4th at 1145.

19 *Deutsche Bank* is instructive on this point. There, the court held that the
 20 plaintiff sufficiently alleged that JPMorgan and Deutsche Bank knowingly
 21 benefitted from their participation in Epstein’s sex trafficking scheme because the
 22 plaintiff alleged that the banks understood that they “would lose a lot of money if
 23 [they] fired Epstein as [a] client,” so they not only “chose to ignore warnings that
 24 Epstein was involved in sex-trafficking” but even affirmatively “lobbied to keep
 25 Epstein as a client” because the “relationship with Epstein was lucrative.” 671 F.
 26 Supp. 3d at 408. Plaintiff’s allegations here, in contrast, do not show that the Azoff
 27 Entities “would lose a lot of money” if they did not arrange for her to join to tour in
 28

1 Los Angeles, *see id.*, particularly since she points only to business actions of Dolan
 2 that occurred before Plaintiff ever came to California. Nor can Plaintiff allege any
 3 facts showing that Azoff representatives “ignore[d] warnings” that Dolan sought to
 4 sexually exploit her and instead actively “lobbied” to participate in the alleged
 5 scheme because it would be lucrative. *See id.*

6 Rather, the allegations here are far more tenuous than those that the court in
 7 *Geiss* concluded were insufficient to state a claim. There, in a case alleging
 8 participation of The Weinstein Company (“TWC”) in Harvey Weinstein’s sex
 9 trafficking venture, the court noted that, although TWC benefitted from Weinstein’s
 10 continued employment because his films generated revenue for the company, that
 11 fact alone did not establish that Weinstein provided those benefits “*because of*
 12 TWC’s facilitation of H. Weinstein’s sexual misconduct.” 383 F. Supp. 3d at 169
 13 (emphasis in original). There was no allegation that Weinstein secured TWC’s
 14 complicity in his sex trafficking as a condition of his employment; to the contrary,
 15 the allegations demonstrated that any benefit to TWC accrued in spite of
 16 Weinstein’s misconduct—not because of it. *Id.* at 169–70. Here, by the same
 17 token, Plaintiff does not and cannot plausibly allege that Dolan conditioned his
 18 business dealings with the Azoff Entities on their assistance in his alleged
 19 trafficking scheme or that any benefits to the Azoff Entities from a continued
 20 business relationship with Dolan resulted from it. *See id.*

21 Plaintiff’s failure to plead facts showing that the Azoff Entities knowingly
 22 benefitted from a sex trafficking venture provides yet another reason that her claim
 23 must be dismissed.

24 **D. Plaintiff fails to allege facts showing that the Azoff Entities are
 25 vicariously liable for Dolan’s conduct.**

26 Finally, in a vain attempt to keep the Azoff Entities in this lawsuit, Plaintiff
 27 adds yet another conclusory allegation that “Defendant Dolan was an agent of the
 28

1 [Azoff Entities]” and that his “unwanted commercial sex acts with Plaintiff”
2 occurred while “Dolan was acting in his capacity as an agent” such that the Azoff
3 Entities “are vicariously liable for Dolan’s unlawful acts.” Am. Compl. ¶¶ 112–
4 13. This throwaway allegation does nothing to salvage Plaintiff’s deficient claim.

5 “Ninth Circuit courts apply common law agency principles from the
6 Restatement” to TVPA claims. *J.C. v. Choice Hotels Int’l, Inc.*, 2020 WL 6318707,
7 at *8 (N.D. Cal. Oct. 28, 2020). An agency relationship requires “a manifestation
8 by the principal that the agent shall act for him,” the “accept[ance] [of] the
9 undertaking” by the agent, and “an understanding” that “the principal is to be in
10 control of the undertaking.” *B.J. v. G6 Hosp., LLC*, 2023 WL 6120682, at *9 (N.D.
11 Cal. Sept. 18, 2023) (citing Restatement (Third) of Agency § 1.01 (2006))
12 (quotations omitted). And for a principal to be vicariously liable, the agent must be
13 an employee, meaning that the principal “controls or has the right to control the
14 manner and means” of the agent’s work. *Id.*; Restatement (Third) of Agency § 7.07
15 cmt. f. Plaintiff’s conclusory allegation of agency fails under these principles for at
16 least two reasons.

17 First, there are no factual allegations to support Plaintiff’s contention that
18 Dolan was an agent of the Azoff Entities. It is thus not entitled to a presumption of
19 truth. *See Sprewell*, 266 F.3d at 988. There are no allegations that the Azoff
20 Entities and Dolan agreed that Dolan would act for the Azoff Entities or that the
21 Azoff Entities exercised control over Dolan so as to create an employment
22 relationship. Indeed, Plaintiff’s allegations actually dispel the notion that Dolan was
23 an agent or employee of the Azoff Entities. She alleges that Dolan was “a long-time
24 business partner” of the Azoff Entities and “significant funder” of the Eagles tour
25 whose “immense wealth, power, and influence” allowed him to make his band the
26 tour’s opening act. Am. Compl. ¶¶ 32. According to Plaintiff, “Dolan controlled
27 the purse strings” and had “profound power over everyone involved in the venue

1 and the tour.” *Id.* ¶ 55 (emphasis added). These allegations belie the notion that the
 2 Azoff Entities exercised such a degree of control over Dolan as to render Dolan their
 3 agent and give rise to vicarious liability. *See Sprewell*, 266 F.3d at 988 (plaintiff can
 4 “plead himself out of a claim” by alleging “details contrary to his claims”).

5 *Second*, even if Dolan were an agent of the Azoff Entities, the Azoff Entities
 6 would still not be vicariously liable for Dolan’s alleged sexual misconduct. A
 7 principal is only vicariously liable for an agent’s tortious conduct within the scope
 8 of employment, not conduct that solely furthers “the employee’s own
 9 purposes.” Restatement (Third) of Agency § 7.07 cmt. b. Under the “adverse
 10 interest exception,” a “rogue agent’s actions or knowledge are not imputed to the
 11 principal if the agent acts adversely to the principal” and acts “solely for the agent’s
 12 own purposes.” *In re ChinaCast Educ. Corp. Sec. Litig.*, 809 F.3d 471, 476 (9th
 13 Cir. 2015) (quotations omitted). Thus, the court in *Piraino* concluded that the
 14 fencing coach’s alleged sex trafficking could not be attributed to his employer, USA
 15 Fencing, because that conduct was solely for his own purposes, outside the scope of
 16 his authority. 2023 WL 5310556, at *8 (relying on adverse interest exception). By
 17 the same token, the alleged misconduct by Dolan—undertaken solely for his own
 18 benefit and conferring no benefit on the Azoff Entities—is not attributable to the
 19 Azoff Entities.

20 **E. The Court should not grant leave to amend.**

21 The Court should not grant Plaintiff leave to amend her Complaint. Plaintiff
 22 has already had ample opportunity to plead the essential facts: *first*, after the Azoff
 23 Entities identified the factual and legal deficiencies in Plaintiff’s draft complaint on
 24 January 14, 2024, before the commencement of this action; *second*, after the Azoff
 25 Entities provided an advance copy of their motion for Rule 11 sanctions on March 1,
 26 2024; and *third*, in her Amended Complaint filed in response to the Azoff Entities’
 27
 28

1 motion to dismiss the Original Complaint. She has come up woefully short each
2 time. Further amendment would thus be futile.

3 A court’s discretion to deny leave to amend is “particularly broad where
4 plaintiff has previously amended the complaint.” *Ascon Props., Inc. v. Mobil Oil*
5 *Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989); *see also Abagninin v. AMVAC Chem.*
6 *Corp.*, 545 F.3d 733, 742 (9th Cir. 2008) (dismissal with prejudice warranted where
7 “previous amendment failed to cure [the] deficiency” in allegations). Plaintiff’s
8 failure to state a claim—even after the Azoff Entities explicitly and repeatedly
9 identified its shortcomings, giving Plaintiff multiple chances to support her
10 allegations—demonstrates that Plaintiff cannot do so, and that dismissal with
11 prejudice is thus warranted. *See Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133
12 (9th Cir. 2013) (“[d]ismissal without leave to amend is proper if it is clear that the
13 complaint could not be saved by amendment”) (quotations omitted).

14 **V. CONCLUSION**

15 For the foregoing reasons, the Court should grant the Azoff Entities’ motion
16 and dismiss Plaintiff’s first cause of action against the Azoff Entities without leave
17 to amend.

18

19 DATED: April 24, 2024

O’MELVENY & MYERS LLP

20

21 By: /s/ Daniel M. Petrocelli

22

Daniel M. Petrocelli

23

Attorneys for Defendants Azoff Entities

24

25

26

27

28

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the Azoff Entities, certifies that this brief contains 5,187 words, which complies with the word limit of Local Rule 11-6.1.

DATED: April 24, 2024

By: /s/ *Daniel M. Petrocelli*

Daniel M. Petrocelli